

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOSEPH A. ELLIOTT, SR.,	:	CIVIL ACTION NO. 1:04-CV-1101
	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	
	:	
SUPERINTENDENT DONALD	:	
VAUGHN, et al.,	:	
	:	
Defendants	:	

MEMORANDUM

Presently before the court is defendants' motion to dismiss (Doc. 97) portions of the amended complaint (Doc. 72) filed by plaintiff Joseph A. Elliott, Sr. ("Elliott"). For the reasons set forth below, the motion will be granted. In addition, a portion of the complaint will be dismissed pursuant to 28 U.S.C. §1915(e)(2)(B)(ii).

I. Statement of Facts¹

Elliott alleges that, on January 27, 2004, he was involuntarily transferred to a mental health unit in retaliation for filing grievances and lawsuits. (Doc. 72, p. 6). He alleges that defendant Edward G. Rendell ("Rendell"), the Governor of Pennsylvania and the "Chief Executive Officer of the PDOC" was aware of the involuntary transfer and did nothing to help him. (Doc. 72, p. 5-6).

¹Although Elliott asserts a variety of claims against numerous defendants, the recitation of facts will be limited to the claims that defendants are seeking to dismiss.

Elliott also alleges that, since the transfer, he has been deprived of his personal and legal property. (Doc. 72, pp. 9-11). He raised this issue in grievances, which were purportedly denied for frivolous reasons by the grievance coordinator, defendant Ian W. Taggart (“Taggart”). (Doc. 72, pp. 13-14). Elliott alleges that he corresponded with defendant Michael Farnan (“Farnan”), Chief Counsel of the Department of Corrections, on two separate occasions, requesting his assistance in gaining access to his property. According to Elliott, Farnan wrongfully refused to assist him. (Doc. 72, p. 14).

In addition Elliott challenges the conditions of his confinement. He contends that defendants wrongfully withheld his shower shoes and that, on January 30, 2004, he was forced to shower in canvas sneakers and to wear wet sneakers all day.

II. Motion to Dismiss

A. Standard of Review

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal of a claim that fails to assert a basis upon which relief can be granted. FED. R. CIV. P. 12(b)(6). In the context of a motion to dismiss under Rule 12(b)(6), the court must accept as true all of the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom. Langford v. City of Atlantic City, 235 F.3d 845, 847 (3d Cir. 2000) (citing Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996)). Although the court is generally limited in its review to the facts alleged in the complaint, it “may also consider matters of public record, orders, exhibits attached to the complaint and items appearing in the record of the case.” Oshiver v. Levin, Fishbein, Sedran &

Berman, 38 F.3d 1380, 1384 n.2 (3d Cir. 1994); see also In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997) (stating that, although “a district court ruling on a motion to dismiss may not [generally] consider matters extraneous to the pleadings[,] . . . a document integral to or explicitly relied upon in the complaint” may be considered “without converting the motion [to dismiss] into one for summary judgment”) (quoting Shaw v. Digital Equip. Corp., 82 F.3d 1194, 1224 (1st Cir. 1996)).

The court will not dismiss a complaint for failure to state a claim unless it appears beyond a doubt that “no relief could be granted under any set of facts that could be proved consistent with the allegations.” Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002). “The complaint will be deemed to have alleged sufficient facts if it adequately put[s] the defendant on notice of the essential elements of the plaintiff’s cause of action.” Langford, 235 F.3d at 847. The court must grant leave to amend before dismissing a complaint that is merely deficient. See Shane v. Fauver, 213 F.3d 113, 116-17 (3d Cir. 2000).

B. Discussion

Section 1983 of Title 42 of the United States Code offers private citizens a cause of action for violations of federal law by state officials. See 42 U.S.C. § 1983. The statute provides, in pertinent part, as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction

thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

Id.; see also Gonzaga Univ. v. Doe, 536 U.S. 273, 284-85 (2002); Kneipp v. Tedder, 95 F.3d 1199, 1204 (3d Cir. 1996). To establish a civil rights claim, the plaintiff must show a “deprivation” of a constitutional or statutory right by a person “acting under color of state law.” Id. (quoting Mark v. Borough of Hatboro, 51 F.3d 1137, 1141 (3d Cir. 1995)).

“A defendant in a civil rights action must have personal involvement in the alleged wrongs. . . . Personal involvement may be shown through allegations of personal direction or actual knowledge and acquiescence.” Rode v. Dellarciprete, 845 F.2d 1195, 1207-08 (3d Cir. 1988). Each defendant must have been personally involved in the events or occurrences which underlie a claim. See Atkinson v. Taylor, 316 F.3d 257 (3d Cir. 2003); Rizzo v. Goode, 423 U.S. 362 (1976); Hampton v. Holmesburg Prison Officials, 546 F.2d 1077 (3d Cir. 1976). Allegations of participation or actual knowledge and acquiescence, however, must be made with appropriate particularity. Rode, 845 F.2d at 1207-08.

Also, it is well established that claims brought under § 1983 cannot be premised on a theory of *respondeat superior*. Id. Rather, each named defendant must be shown, via the complaint’s allegations, to have been personally involved in the events or occurrences which underlie a claim. See Rizzo v. Goode, 423 U.S. 362

(1976); Hampton v. Holmesburg Prison Officials, 546 F.2d 1077 (3d Cir. 1976). As explained in Rode:

A defendant in a civil rights action must have personal involvement in the alleged wrongs . . . [P]ersonal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence. Allegations of participation or actual knowledge and acquiescence, however, must be made with appropriate particularity.

Rode, 845 F.2d at 1207.

In addition to suing Rendell in his role as the Chief Executive Officer of the Pennsylvania Department of Corrections, Elliott states in his opposition brief that Rendell is being sued in his capacity as governor, “and in that capacity, he exercises executive control, operational authority, supervision and responsibility for the Department of Corrections of Pennsylvania through his cabinet-level appointee Jeffrey A. Beard, who is Secretary of D.O.C. and who serves in that capacity at the pleasure of Rendell.” (Doc. 118-1, p. 4). There is no question that Elliott seeks to impose liability on Rendell based on his supervisory role. Defendants’ motion to dismiss will be granted as to this defendant.

Similarly, Elliott’s concerns with the grievance procedure are meritless. As a threshold matter, the court notes that there is no constitutional right to a grievance procedure. See Jones v. North Carolina Prisoners’ Labor Union, Inc., 433 U. S. 119, 137- 38 (1977); Wilson v. Horn, 971 F. Supp. 943, 947 (E. D. Pa. 1997). While prisoners do have a constitutional right to seek redress of their grievance from the government, that right is the right of access to the courts which is not compromised

by the failure of the prison to address an inmate's grievance. See Booth v. King, 346 F. Supp. 2d 751, 761 (E. D. Pa. 2004). Elliott's dissatisfaction with Taggart's decision to deny his grievance does not rise to the level of a constitutional violation. See Alexander v. Gennarini, 144 Fed. Appx. 924 (3d Cir. 2005) (finding allegations asserting involvement in the post-incident grievance process insufficient to state a claim) and this claim will be dismissed.

Elliott also asserts an Eighth Amendment claim. The Eighth Amendment guarantees that individuals will not be subjected to "cruel and unusual punishments." U.S. CONST. amend. VIII. In the prison arena, this provision prohibits official from acting with "deliberate indifference" towards a "substantial risk of harm to an inmate." Farmer v. Brennan, 511 U.S. 825, 834, 828, 832-34 (1994). A violation of the Eighth Amendment is established when a prison official "knows of and disregards an excessive risk to inmate health or safety." Id. at 837 ("[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.")

Elliott has not alleged a "substantial risk of harm" of which prison officials knew and yet disregarded. He claims that he was forced to wear canvas sneakers in the shower because the defendants would not get his shower shoes, and that he was then required to wear the wet sneakers for the remainder of the day. This conduct does not rise to the level of a serious risk to his health. Hence, defendants' motion will be granted.

III. Section 1915(e)(2)

A. Standard of Review

Section 1915(e)(2) states, in pertinent part, “the court shall dismiss the case at any time if the court determines that (B) the action . . . (ii) fails to state a claim on which relief may be granted . . . ” 28 U.S.C. §1915(e)(2)(B)(ii). The applicable standard of review is the same as the standard for a 12(b)(6) motion. Grayson v. Mayview State Hosp., 293 F.3d 103 (3d Cir. 2002). A complaint that does not establish entitlement to relief under any reasonable interpretation is properly dismissed without leave to amend. Id. at 106.

B. Discussion

A prisoner's due process claim based on random and unauthorized deprivation of property by a state actor is not actionable under §1983, whether the deprivation is negligent or intentional, unless there is no adequate post-deprivation remedy available. See Parratt v. Taylor, 451 U.S. 527, 542 (1981) overruled on other grounds by 474 U.S. 327 (1986); Hudson v. Palmer, 468 U.S. 517, 533 (1984).

Elliott seeks to hold Taggart and Farnan² liable for the deprivation of his personal property. However, he availed himself of an adequate post-deprivation remedy when he utilized the prison's internal grievance system. See Tillman v. Lebanon County Correctional Facility, 221 F.3d 410, 422 (3d Cir.2000). He also had the option of filing a state tort suit for conversion of property. See Hudson, 468 U.S.

²Because Elliott cannot state a deprivation of property claim, the court declines to address defendants' argument that Farnan is entitled to immunity.

at 535. Consequently, the deprivation of property claim will be dismissed pursuant to 28 U.S.C. §1915(e)(2)(B)(ii).

An appropriate Order will issue.

/s/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge

Dated: April 10, 2006

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOSEPH A. ELLIOTT, SR.,	:	CIVIL ACTION NO. 1:04-CV-1101
	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	
	:	
SUPERINTENDENT DONALD VAUGHN, et al.,	:	
	:	
Defendants	:	
	:	

AND NOW, this 10th day of April, 2006, upon consideration of defendants' motion to dismiss (Doc. 97), and for the reasons set forth in the accompanying memorandum, it is hereby ORDERED that:

1. Defendants' motion (Doc. 97) is GRANTED as follows:
 - A. Any and all claims against defendant Rendell are DISMISSED.
 - B. Plaintiff's grievance procedure claim lodged against defendant Taggart is DISMISSED.
 - C. Plaintiff's Eighth Amendment claim concerning the canvas sneakers is DISMISSED.
2. Plaintiff's deprivation of property claim lodged against defendants Taggart and Farnan, and any other named defendants, is DISMISSED. See 28 U.S.C. §1915(e)(2)(B)(ii).
3. The Clerk of Court is directed to terminate defendants Rendell, Farnan and Taggart.

4. The remaining defendants shall file an answer or appropriate pre-trial motion on or before April 27, 2006, addressing the remaining claims contained in the amended complaint. (Doc. 72).

/s/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge